

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
)  
Application by BellSouth Corporation, *et al.* )  
Pursuant to Section 271 of the )  
Communications Act of 1934, as amended, )  
To Provide In-Region, InterLATA Services )  
In Louisiana )

FCC MAIL ROOM  
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CC Docket No. 98-121

**COMMENTS OF THE  
LOUISIANA PUBLIC SERVICE COMMISSION**

The Louisiana Public Service Commission submits these comments in support of the BellSouth Telecommunications filing made with the Federal Communications Commission, hereinafter FCC, on July 9, 1998. BellSouth seeks to provide interLATA in-region long distance service in Louisiana upon approval of its application by the FCC. 47 USC 271(d)(2)(B) requires the FCC to "consult with the State commission of any State that is subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c)". These Comments are offered to verify that BellSouth has indeed complied with the requirements of subsection (c).

**I. BACKGROUND**

On April 13, 1994, during a public meeting, the Louisiana Public Service Commission voted unanimously to open a proceeding to investigate the possibility of allowing competition in the local telecommunications market. On March 15, 1996 the Louisiana Public Service Commission adopted by a 4-0 vote, with one member absent, "Regulations for Competition in the Local Telecommunications Market." This General Order was amended on October 16, 1996 and March 19, 1997. (Exhibit 1). As stated in the Preamble of the General Order the Louisiana

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Public Service Commission was and still is focused upon the belief that local competition will benefit Louisiana consumers. The Louisiana Public Service Commission is concerned that a level playing field exist for each service provider so that each has the same opportunity to succeed. However, the Louisiana Public Service Commission is not concerned local competition will benefit or hurt one of the service providers, only that it benefits the consumer.

As shown above, Louisiana has been intimately involved in the issue of local competition for a period of more than four years. Over those four years, the Louisiana Public Service Commission, from the individual Commissioners to the staff, has worked diligently so as to be appropriately qualified to render an opinion on BellSouth's 271 application and the state of local competition. The Louisiana Public Service Commission approves of and supports BellSouth's application because of its belief that BellSouth has met the requirements of section 271 and that its approval will benefit the consumers of the State of Louisiana.

## **II. PRIOR PROCEEDING**

In August of 1997, the Louisiana Public Service Commission approved by a 3-2 vote the BellSouth Statement of Generally Available Terms and Conditions (SGAT) and affirmed that requirements of Section 271 and public interest were satisfied by the BellSouth Louisiana application. That application was rejected by the FCC on February 3, 1998. The application was rejected in part because it failed to meet two aspects of the competitive checklist, namely, BellSouth failed to show nondiscriminatory access to its Operations Support Systems, hereinafter OSS, and BellSouth failure to offer Contract Service Arrangements, hereinafter CSA, at

wholesale discount which is in violation of the Telecommunications Act of 1996 and FCC regulations. (See Memorandum Opinion and Order, CC Docket No. 97-231, February 3, 1998.)

Although the Louisiana Public Service Commission did not agree with the FCC Opinion and Order, it nevertheless urged BellSouth to remedy the problems and resubmit a new 271 application because it was believed that a new application would be approved before a favorable decision on appeal could be rendered.

### **III CURRENT APPLICATION**

The Louisiana Public Service Commission presumes that the FCC concluded that BellSouth satisfied twelve of the fourteen points in the competitive checklist because the FCC only gave as its reasons for rejection of the first application as the failure of BellSouth to satisfy two of the points. Therefore, these comments will only discuss the two points that the FCC found deficient. (Please see the Louisiana Public Service Commission comments of November 24, 1997 for a discussion of the other twelve points). After careful review of BellSouth's current application and a review of the progress BellSouth made regarding the two points the FCC found deficient, the Louisiana Public Service Commission voted by a 4 to 1 vote to approve and support BellSouth's 271 application of July 9, 1998. (See exhibit #2).

#### **A. SGAT**

In its rejection of the initial BellSouth application, the FCC noted that certain services (Contract Services Arrangements) were not available for resale at a discount. The Louisiana Public Service Commission had determined that these discounted offerings should be made available for resale, but with no additional discount. Believing that it would be quicker to change

the Louisiana Local Competition Rules rather than wait for a determination of whether the local rules violated the Act, the Louisiana Public Service Commission amended its order to require a wholesale discount of 20.72% apply to CSAs and SBA's until such time as the Louisiana Public Service Commission could determine whether a CSA and SBA specific discount is necessary, and if so, in what amount. (See exhibit #3.)

### **B. OPERATIONS SUPPORT SYSTEMS**

The second reason given for FCC rejection of the BellSouth 271 application was because of perceived deficiencies in the Operations Support Systems. (OSS) As the FCC noted, the OSS were region wide in application, and the Louisiana application was only filed 37 days after the South Carolina application which was ultimately rejected. The Louisiana Public Service Commission has been diligent in its monitoring of the BellSouth OSS enhancements and modifications. Demonstrations and reports have been required of BellSouth to assess progress. One of these demonstrations was held in New Orleans for a joint audience of FCC and Louisiana Public Service Commissioners and staff.

The Louisiana Public Service is convinced that significant progress has been made in this area of OSS. We are particularly pleased with progress demonstrated in providing CLECs electronic access to additional pre-ordering and ordering information. This was an area of much discussion in the Memorandum Opinion and Order in the previous 271 application. Also, please note that CLECs are now provided electronic reject notification. It should also be noted that BellSouth conducts a number of free training sessions for CLEC personnel in order for them to become proficient in the operation of the OSS. There is little serious debate that BellSouth has

become proficient in the operation of the OSS. There is little serious debate that BellSouth has expanded considerable time and resources in developing its OSS.

Other examples of actions BellSouth has taken to enhance features of the OSS include:

1. Electronic tools that help CLEC service representatives submit error-free orders;
2. Distributed specifications that permit any CLEC to construct an integrated pre-ordering/ ordering interface;
3. Conducted additional testing to confirm that BellSouth's systems work as designed and have ample spare capacity to meet foreseeable demand;
4. Instituted service quality measurements that enable CLECs to monitor their own access to OSS to confirm they are receiving nondiscriminatory access;
5. Provided CLECs a complete set of business rules used by BellSouth to process CLEC orders;
6. Provided single address validation in the LENS inquiry mode;
7. Changed the LENS inquiry mode to allow for 30-day telephone number reservations;
8. Removed restrictions on the total number of telephone numbers a CLEC can keep on reserve in a central office;
9. Introduced a change control process through which CLEC may propose and discuss changes to BellSouth's electronic interfaces.

### **C. PERFORMANCE MEASUREMENTS**

Another criticism of the original BellSouth Louisiana application dealt with the absence of Performance Measurements that evaluate provision of services to CLECs by BellSouth. The FCC held that BellSouth did not produce measurements or data that demonstrated parity. This issue has been examined in other jurisdictions as well. The Louisiana Public Service Commission has

closely followed these discussions and examinations, and has attempted to take advantage of the findings and results. We have monitored the docket of the Georgia Public Service Commission on this subject, and have studied the positions of the FCC and Department of Justice.

In June, 1998, the Louisiana Public Service Commission further modified the approved BellSouth SGAT to adopt interim Performance Measurements for implementation in Louisiana. These are comprehensive Measurements which attempt to capture the benefits of other examinations in this area. The Order provides:

(2) that the Commission adopt on an interim basis the Service Quality Measurements and Standards filed by BellSouth Telecommunications, Inc. in this matter. The filing includes the State of Georgia Service Quality Performance measurements as stated in Georgia Docket no. 7892-U; measurements and standards as suggested by the FCC; together with the measurements and standards suggested by the Department of Justice in connection with the Oklahoma 271 case.

In an overly simplistic view, Performance Measurement are an objective way to determine whether BellSouth is engaged in anticompetitive practices. Louisiana law is constructed in such a way that if anybody, including a CLEC, believes that BellSouth has engaged in anticompetitive practices they are required by state law to file a complaint with the Louisiana Public Service Commission in order to obtain relief. (See La. RS 51:1401 et seq.) As of today's date no such complaint, formal or informal, has been filed with the Louisiana Public Service Commission. By the lack of any such complaint one can conclude that BellSouth has not engaged in anticompetitive practices even though Performance Measurements have not been adopted in the final form.

#### **IV STATE OF LOCAL COMPETITION**

In the Memorandum Opinion, the FCC at page 12 stated:

The Department of Justice found that the Louisiana local market is not "**fully and irreversibly open to competition.**" In evaluating whether competition in a local market satisfies this standard, the Department of Justice considers whether **all three entry paths** contemplated by the 1996 Act-- facilities based entry involving construction of new networks, the use of unbounded network elements, and resale of the BOC's service-- are fully and irreversibly open to competition to serve both business and residential consumers. The Department of Justice **examines the extent of actual local competition**, whether significant barriers continue to impede the growth of competition, and whether benchmarks to prevent backsliding have been established. Applying these standards, the Department of Justice concluded that BellSouth faces no **significant** competition in local exchange service in Louisiana. (Emphasis added)

It would appear as though the Department of Justice has constructed some type of market share approach to determine whether a local market is open to competition. The Louisiana Public Service Commission strongly disagrees with this approach. In order for local competition to reach the highest level, not only must BellSouth cooperate but other telephone service providers must actually enter the market. BellSouth only has control over its own actions. To predicate BellSouth's entry into the interLATA market upon an unrelated company's decision to enter the local market circumvents the plain and clear intent of the Act. BellSouth only has to open itself up to such an extent that a company that chooses to compete in Louisiana may do so. BellSouth cannot be blamed nor punished if other telephone service providers fail to enter the local markets in Louisiana.

A much better indicator of competition is the growth in competition over a period of time.

For example, at the time of BellSouth's initial 271 application (November 6, 1997) the Louisiana Public Service Commission had approved 63 interconnection agreements with 50 pending. On July 9, 1998, the date of the second 271 filing, the Louisiana Public Service Commission had approved 178 interconnection agreements and 76 were pending. On November 6, 1997 the Louisiana Public Service Commission had approved 29 CLEC applications with 35 pending. On July 9, 1998 the Louisiana Public Service Commission had approved 46 CLEC application with 17 pending. Additionally, the number of CLECs with both an approved resell agreements and approved application went from 8 to 31. Also, on November 6, 1997 no CLECs were operational, whereas, on July 9, 1998 22 CLECs were operational with 5 of those being either facilities based only or a combination of both facilities based and resale services. On November 6, 1997 6 collocations were present. Now, there are 7 collocations. Lastly, on November 6, 1997 7,237 resale lines were in operation. On June 1, 1998 a total of 41,998 lines were being resold. This represents an increase of over 670% in less than 7 months. Currently, the number of resale lines has been increasing by more than 2000 per month. The increase in number is impressive when one considers that Louisiana ranks near the bottom in most economic categories and the largest interexchange carriers with the technical expertise and financial strength have ignored Louisiana. Competition is alive and well in the State Of Louisiana because the local markets are open in the state of Louisiana. The Louisiana Public Service Commission is committed to local competition in telecommunications and believes that by granting BellSouth's application not only will Louisiana customers have an additional choice for long distance service but those that choose BellSouth for long distance will obtain rates that are 5% less than AT&T's filed MTS

rates. Lastly, it is hoped that with the approval of BellSouth's 271 application other telecommunications companies with the technical expertise and financial strength to compete will be inspired to enter the market for local telephone service.

## V. SUMMARY

The Louisiana Public Service Commission takes very seriously its responsibility to expand competition in the telecommunications markets. As early as 1994, the Louisiana Public Service Commission opened a dialogue with telecommunications providers about opening up state markets. The early discussions led to the adoption of a comprehensive set of competitive regulations in March, 1996, and the periodic modification of these regulations when warranted. The Louisiana Public Service Commission has taken every step to ensure that our regulations complied with the Telecommunications Act of 1996 and with other legal and regulatory requirements. From the earliest days of 1996, we have monitored the FCC's comments and regulations and court cases on these matters and have attempted to apply the appropriate standard and interpretation in Louisiana.

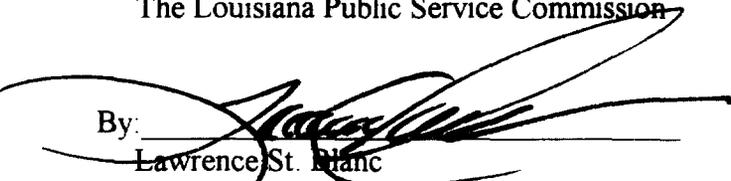
The Louisiana Public Service Commission has closely examined the report of the FCC dated February 3, 1998 rejecting our approval of the BellSouth 271 application. While we do not agree with the rejection, we did make every effort to make modifications which were deemed essential by the FCC. We believe that the BellSouth application now before the FCC complies fully with the Act and would bring real benefits to Louisiana customers. The two and a half years since the passage of the Act have brought a degree of clarity to all who attempt to interpret and implement its provisions. It was noted in the FCC initial rejection of the Louisiana application

that "BellSouth continues to make progress" but that the FCC was "compelled by Law" to reject the application. We are confident that in your examination of the current application you will be compelled by the same law to approve it.

It is the intent of the Louisiana Public Service Commission to continue to work with the FCC in expanding competition through implementation of the Act. Despite the recent rash of mergers and court challenges, we believe that the dual participation of the states and the FCC is the proper way to implement the Act. We fully believe that this application before you meets your requirements as we understand them. However, should the FCC disagree with this Commission's assessment of BellSouth's 271 application then it is critical that you supply on a point by point basis a detailed explanation for the actions taken. This same request applies to the Department of Justice evaluation. Only through a detailed explanation will we continue to make progress toward full implementation of the Telecommunications Act of 1996.

In conclusion, it is the belief of the Louisiana Public Service Commission that BellSouth's 271 application meets the requirements of the Act and that the approval of the application is in the public interest.

Respectfully submitted,  
The Louisiana Public Service Commission

By:   
Lawrence St. Blanc  
Executive Secretary

**LOUISIANA PUBLIC SERVICE COMMISSION**

**GENERAL ORDER**

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In re: Amendments to General Order dated March 15, 1996, as Amended October 16, 1996, *In re: Regulations for Competition in the Local Telecommunications Market.*

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(Decided at the March 19, 1997 Open Session)

**APPENDIX "B"**

**LOUISIANA PUBLIC SERVICE COMMISSION**

**REGULATIONS FOR COMPETITION IN  
THE LOCAL TELECOMMUNICATIONS MARKET  
(AS AMENDED 3/19/97)**

**EXHIBIT**

1 #1

**LOUISIANA PUBLIC SERVICE COMMISSION  
REGULATIONS FOR COMPETITION IN  
THE LOCAL TELECOMMUNICATIONS MARKET**

**(AS AMENDED 3/19/97)**

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**PREAMBLE**

The Louisiana Public Service Commission hereby promulgates the following regulations (the "Regulations") to foster the transition from monopoly to competitive local telecommunications markets in Louisiana. The Commission imposes these Regulations for competition within local service areas in order to encourage competitive entry, preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The Commission recognizes that, given current local telecommunications markets, competition in every segment of these markets will take time to develop. It is likely that the introduction of competitive services will occur asymmetrically with new entrants initially targeting high volume, heavily populated urban areas, and other selected high-profit areas, and that, therefore, the benefits resulting from competition will be seen first in those areas. However, it is the policy of the Commission that all Louisiana consumers should benefit from competition. Although a limited exemption is proposed for incumbent local exchange carriers with 100,000 access lines or less in Louisiana, the Commission encourages competition throughout Louisiana.

These Regulations are designed to ensure that Louisiana consumers in the aggregate benefit from competition. The Commission grants telecommunications services providers the opportunity to compete in local telecommunications markets under the condition that the consumers of Louisiana benefit by having greater choices among telecommunications products, prices and providers. Through the development of effective competition, which promotes the accessibility of new and innovative services at non-discriminatory prices consumers can and are willing to pay, and which results in wider deployment of existing services at competitive prices, the public interest will be promoted.

## SECTION 101. Definitions

1. Basic Local Service - those telecommunications services required to provide residential and single-line business customers with each of the items comprising the definition of Universal Service as specified in Commission General Order, dated May 22, 1995.
2. Basic Services - for purposes of the Price Plan and ILECs regulated thereunder, the category of services required to provide basic local service to residential and single line business customers, including all services itemized in the Price Plan.
3. Bona Fide Request - a request to a telecommunications services provider that demonstrates a good faith showing by the requesting party that it intends to purchase the services requested within ninety (90) days of the date of the request.
4. Central Office - a facility within a telecommunications network where calls are switched and which contains all the necessary equipment, operating arrangements and interface points for terminating and interconnecting facilities such as subscribers' lines and interoffice trunks.
5. Commission - the Louisiana Public Service Commission.
6. Commercial Mobile Radio Service (CMRS) - a mobile service that is: (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) an interconnected service; and (3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) the functional equivalent of such a mobile service described in paragraph (a) of this definition. 47 CFR § 20.3, as amended. CMRS includes "Radio Common Carriers" as that term is defined and used in La. R.S. § 45:1500 *et seq.*
7. Commercial Mobile Radio Service Provider - any person or entity engaged in the provision of a service that is a commercial mobile radio service. CMRS Provider includes "Radio Common Carriers" as that term is defined and used in La. R.S. § 45:1500 *et seq.*
8. Competitive Access Provider (CAP) - a telecommunications services provider offering and/or providing only exchange access services or private line services in a local service area.
9. Competitive Local Exchange Carrier (CLEC) - a telecommunications services provider, except a CAP, offering and/or providing local telecommunications services in competition with an ILEC.
10. Essential Telecommunications Carrier (ETC) - the telecommunications services provider designated by the Commission to be the obligated provider of basic local service within a particular local service area (formerly referred to as the Carrier-of-Last-Resort).

11. Exchange Access Services - the provision of switched or dedicated telecommunications services which connect an end-user to an interexchange carrier for the purpose of originating or terminating interexchange telecommunications. These services are provided by facilities in an exchange area for the transmission, switching, or routing of interexchange telecommunications originating or terminating within the exchange area.

12. Exchange Area - a geographic area established by a telecommunications services provider consisting of one or more central offices together with associated facilities used in furnishing local telecommunications services within the area in which telecommunications services and rates are the same.

13. Facilities Based Telecommunications Services Provider - a telecommunications services provider which has deployed and is using its own significant telecommunications equipment or facilities within a particular geographic area in Louisiana to serve its Louisiana subscribers. A facilities based provider may offer services exclusively over its own facilities, or partially over its own facilities and partially through the resale of ILEC and/or CLEC wholesale offerings.

14. Gross Domestic Product-Price Index (GDP-PI) - the total value of all currently produced goods and services in the United States during any particular time period as is calculated by the United States Bureau of Economic Analysis of the Department of Commerce.

15. Incumbent Local Exchange Carrier (ILEC) - telecommunications services provider that is the incumbent and historical wireline provider of local telecommunications services within a local service area as of the effective date of these Regulations, and any intrastate regulated affiliate or successor to such entity which is engaged in the provisioning of local telecommunications services.

16. Interconnection - the physical linking of networks, including signaling facilities, of telecommunications service providers that provides the reciprocal ability to handoff calls from customers on one network to customers on another provider's network in a manner that is transparent to customers, and which allows one provider to utilize unbundled basic network functions of another provider for the purpose of providing an end-to-end service to end users. Interconnection can be achieved at different points on the network.

17. Interconnection Services - for purposes of Price Plan and ILECs regulated thereunder, the category of services that allow telecommunications services providers to interconnect to an incumbent local exchange carrier's network to originate or terminate telecommunications services, including all services itemized in the Price Plan. For other purposes, those services offered by telecommunications services providers to other providers to interconnect networks in order to originate or terminate telecommunications traffic, and to interconnect at all unbundled points on another provider's network.

18. Interexchange Carrier - a telecommunications services provider of interLATA telecommunications services.
19. Interexchange Telecommunications - telecommunications traffic that originates in one exchange area and terminates in a different exchange area regardless of the service or facilities used to originate and terminate traffic.
20. Intraexchange Telecommunications - telecommunications traffic that originates and terminates within the same exchange area regardless of the service or facilities used to originate and terminate traffic.
21. LPSC - the Louisiana Public Service Commission.
22. Local Exchange Carrier (LEC) - telecommunications services provider offering and/or providing local telecommunications services.
23. Long Distance - any telephone call to a location outside a local service area. Also called a toll call.
24. Local Service Area - the geographic area in which end users may place telephone calls without incurring toll charges which includes a flat rate calling area. The local service area of a CLEC may be different from the local service area of an ILEC. Nothing in this definition shall preclude the provision of toll service within the expanded Local Optional Service Area as described in Order No. U-17949-N, dated October 18, 1991.
25. Local Telecommunications Services - telecommunications services traditionally provided by an ILEC as a local service, including but not limited to, exchange access services, private line services, basic local services, and public pay phone services.
26. Long Run Incremental Cost - the costs a company would incur (or save) if it increases (or decreases) the level of production of an existing service or group of services. These costs consists of the costs associated with adjusting future production capacity and reflect forward-looking technology and operations methods.
27. Market Trial - a trial involving paying customers that focuses on the collection of primary market research information that could impact the marketing of a product or service, such as customer acceptance of a product or service and/or willingness to pay for a product or service.
28. Mobile Service - a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes: a) both one-way and two-way radio communication services; b) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations for private one-way or two-way land mobile radio communications by eligible

users over designated areas of operation; and c) any service for which a license is required in a personal communications service pursuant to 47 CFR Part 24. 47 CFR Sect. 20.3, as amended. Mobile Service includes "Radio Common Carriers" as that term is defined and used in La. R.S. § 45:1500 *et seq.*

29. Non-Basic Services - for purposes of the Price Plan and ILECs regulated thereunder, all services not otherwise classified as basic or interconnection services offered by an ILEC. See Appendix A and Appendix B attached.

30. Number Portability - the ability of an end-user customer of local telecommunications services to retain his existing telephone number(s) without impairment of quality, reliability or convenience, when changing from one provider of local telecommunications services to another, as long as the user remains at the same location.

31. Private Line Service - any dedicated point-to-point, or point-to-multi point service for the transmission of any telecommunications services.

32. Private Mobile Radio Service (PMRS) - As defined at 47 CFR § 20.3, as amended.

33. Public Pay Telephone Service Provider - COCOTs as defined in Commission Orders U-16462, U-16462-A through U-16462-G, General Order dated March 30, 1995 and any subsequent Orders, including but not limited to, Orders resulting from Docket No. U-21322.

34. Rate - the price of a service approved by the Commission.

35. Resale - the offering of services, elements, features, functions, and capabilities for sale to competing telecommunications services providers.

36. Reseller - a telecommunications services provider that purchases telecommunications services from another provider for resale to end users for a fee.

37. Small ILEC - an incumbent local exchange carrier with 100,000 access lines or less statewide.

38. Subscriber List Information - any information (a) identifying the listed names of subscribers of a TSP and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications, and (b) that the TSP or an affiliate has published, caused to be published, or accepted for publication in any directory format.

39. Technical Trial - a trial involving non-paying customers that focuses on assessing the technical capabilities of a new network serving arrangement, including technologies and supporting equipment, and associated supporting systems, such as ordering, billing, provisioning

and maintenance systems. Services provisioned pursuant to a technical trial may include new services and/or new ways of providing existing services

40. Telecommunications- the bi-directional transmission of information of the user's choosing between or among points specified by the user, including voice, data, image, graphics and video, without change in the form or content of the information as sent and received, by means of an electromagnetic and/or fiber optic transmission medium, including all instrumentalities, facilities, apparatus and services (including the collection, storage, forwarding, switching and delivery of such information) essential to such transmission.

41. Telecommunications Directory Publisher (TDP) - any person or entity, including affiliates of an ILEC, engaged in the business of publishing subscriber list information, in any format.

42. Telecommunications Equipment - equipment, other than customer premises equipment, used by a telecommunications services provider to provide telecommunications services including software integral to such equipment.

43. Telecommunications Service - the offering and/or providing of telecommunications for compensation or monetary gain to the public, or to such classes of users as to be effectively available to the public regardless of the facilities used to transmit the telecommunications services.

44. Telecommunications Services Provider (TSP) - a generic term used to refer to any person or entity offering and/or providing telecommunications services for compensation or monetary gain.

45. Toll Call - a call to any location outside the local service area. Also called a long distance call.

46. Total Service Long Run Incremental Cost (TSLRIC) - the total additional cost incurred by a telecommunications services provider to produce the entire quantity of a service, group of services, or basic network functions, given that the telecommunications services provider already provides all of its other services. TSLRIC is based on the least cost, most efficient technology that is capable of being implemented at the time the decision to provide the service is made.

47. Unbundle - disaggregation of a facilities-based telecommunications services provider's network services, including elements, features, functions and capabilities whenever technically feasible at rates as determined by the Commission.

48. Universal Service - as defined by Commission General Order dated May 22, 1995, and any subsequent modifications or amendments thereto.

## **SECTION 201. Public Interest**

A. Based on the complete record before the Commission in this docket, which includes the complete records, evidence and pleadings of Subdocket "D" of Docket U-17949 and the Regulatory Track of Subdocket "E" of Docket U-17949,<sup>1</sup> and considering the present state of the telecommunications market structure, the Louisiana Public Service Commission hereby finds, determines and declares that the promotion of competition in all local telecommunications markets in Louisiana is in the public interest.

B. Because effective competition will not exist in these markets in the short-term but will require a long-term policy enabling competition to develop, the Commission likewise finds, determines, and declares that providing an appropriate regulatory framework and methodology to transition into effective competition is additionally in the public interest.

## **SECTION 202. Service Areas**

A. TSPs are permitted to provide telecommunications services in all historically designated ILEC service areas as described in existing Commission orders as of the effective date of these Regulations, or in maps, tariffs and rate schedules reviewed and approved by the Commission prior to the effective date of these Regulations, with the exception of service areas served by ILECs with 100,000 access lines or less statewide (the "Small ILECs"). The Small ILEC service area exemption does not apply to the provisioning of CMRS and PMRS. Additionally, the Small ILEC service area exemption does not apply to the provisioning of any telecommunications services authorized by the Commission in Subdocket "F" of Docket No. U-17949.

B. A Small ILEC may, once these Regulations are effective and subject to the provisions of Section 301 below, provide telecommunications services in the historically designated service area(s) served by a non-exempted ILEC in which case the Small ILEC's historically designated service area(s) will become open to competition by all TSPs.

C. A Small ILEC shall be exempted from the provisions and mandates of the following Sections of these Regulations unless it provisions telecommunications services outside its historically designated service area(s), in which case the following provisions shall apply to that Small ILEC: 1) Section 801. Number Portability; 2) Section 901. Interconnection; 3) Section 1001. Unbundling; and 4) Section 1101. Resale.

D. A Small ILEC may, as provided in Section 701 below, petition the Commission to

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<sup>1</sup> LPSC Order No. U-17949 - Subdocket D, March 2, 1995; and LPSC Order No. U-17949 (Subdocket E), August 22, 1995.

be regulated pursuant to a price cap plan in which case its historically designated service area(s) will become open to competition by all TSPs.

E. For Commission regulatory purposes, a Small ILEC choosing to provision telecommunications services outside its historically designated service area(s) shall segregate the assets, liabilities, revenues and expenses relating to services provisioned in its historically designated service area(s) from those relating to services offered or provided outside its historically designated service area(s). The Small ILEC's revenues not derived, and expenses not incurred from the Small ILEC's historically designated service area(s) shall not be considered by the Commission for purposes of applying Order No. U-21181, including LECAF funding. The Small ILEC's traditional ILEC operations shall not cross-subsidize its competitive ventures.

F. If a Small ILEC forms a subsidiary and/or other affiliate entity to provision telecommunications services outside its historically designated service area(s), the Small ILEC's historically designated service area(s) will not become open to competition by all TSPs. For Commission regulatory purposes, including the application of Order No. U-21181 and LECAF funding, the Small ILEC shall maintain separate books and accounts which segregate the assets, liabilities, revenues and expenses of the Small ILEC from those of the subsidiary and/or other affiliate entity. The Small ILEC's traditional ILEC operations shall not cross-subsidize the operations of any subsidiary and/or other affiliate entity providing telecommunications services outside the Small ILEC's historically designated service area(s). The Small ILEC shall apply all Commission imputation rules when dealing with its subsidiary and/or other affiliate.

G. The Small ILEC exemption will be evaluated by the Commission three years from the effective date of these Regulations to determine whether the exemption will be terminated, continued and/or modified.

H. An exclusive franchise, license or certificate shall not be issued to any TSP to provide telecommunications services for a particular service or geographic area by the Commission.

### **SECTION 301. Certification of Telecommunications Services Providers**

A. Any TSP desiring to offer telecommunications services is required to apply to the Commission for issuance of a Certificate of Authority. This application process shall not apply to ILECs with regard to their historically designated service areas and to TSPs exclusively provisioning CMRS and/or PMRS. Providers of CMRS and/or PMRS shall continue to register with the Commission.

B. Until modified by state or federal law, or explicit Commission order, operator

service providers shall remain subject to the provisions of Order Nos. U-17957 through U-17957-C, and any subsequent orders. Public Pay Telephone Service Providers shall remain subject to the provisions of Order Nos. U-16462 through U-16462-G and any subsequent orders, including General Order dated March 30, 1995. To the extent that operator service providers and public pay telephone service providers desire to expand their service offerings of telecommunications services beyond those authorized prior to the effective date of these Regulations, such providers must apply to the Commission for authority pursuant to, and agree to be bound by, these Regulations.

C. The Commission, through its Secretary, when in the public interest and subject to and in compliance with the conditions and procedures set forth below, shall grant a Certificate of Authority to an applicant that possesses the requisite managerial, financial and technical abilities to provide telecommunications services. A color-coded Certificate of Authority suitable for framing and display in a TSP's business office will be issued by the Commission. No TSP shall offer or provide telecommunications services to any person or entity prior to obtaining a Certificate of Authority from the Commission.

D. TSPs operating under a Certificate of Authority issued prior to the effective date of these Regulations or, granted pursuant to this Section, or TSPs previously registered with the Commission, are prohibited from providing telecommunications services to or on behalf of an uncertificated TSP that is required to be certificated pursuant to this Section and which is providing telecommunications services in Louisiana.

E. Each applicant hereunder shall submit to the Secretary of the Commission an original and five (5) copies of its application along with an application fee of \$250.00 to cover the administrative costs of processing the application. The applicant shall also supply each Commissioner with a copy of its application simultaneously therewith. Upon request by the Secretary, and when reasonably feasible, an applicant shall also submit in addition to the original and five copies, a copy of its application on computer disk in a format specified by the Secretary. All applications shall include the following:

1. Legal name, and name under which the applicant intends to do business, mailing and physical addresses of the applicant, and telephone number where the applicant can be reached by the Commission.
2. The names and addresses of the applicant's principal corporate officers.
3. If different from (2) above, the names and addresses of all officers and

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<sup>2</sup> In re: Registration and Certification of Customer-Owned Coin-Operated Telephone Service Providers. *See also* Docket No. U-21322, which shall consolidate and supersede the cited Orders as applied to public payphone service providers and operator service providers.

corporate officers in Louisiana, and the names and addresses of employees responsible for Louisiana operations.

4. Information about the structure of the business organization, and, where applicable, a copy of any articles of incorporation, partnership agreement or by-laws of the applicant. An applicant shall also disclose all affiliate entities offering and/or providing telecommunications services in Louisiana.

5. A certified copy of the applicant's authorization to do business in Louisiana issued by the Secretary of State.

6. The name, address and telephone number of the applicant's Louisiana agent for service of process.

7. Documentation demonstrating managerial, financial and technical abilities, including but not limited to, the following:

(a) To demonstrate financial ability, each applicant shall provide a copy of its most recent stockholders annual report and its most recent SEC 10K, or, if the applicant is not publicly traded, its most recent financial statements. If the applicant does not have separate financial reports, it may submit applicable financial statements of an affiliate with explanation to demonstrate the financial ability of the applicant.

(b) To demonstrate managerial ability, each applicant shall attach a brief description of its history of providing telecommunications services and shall list the geographic areas in which it has been and is currently providing telecommunications services. Newly created applicants shall list the experience of each principal officer in order to show its ability to provide service.

(c) Technical ability shall be indicated by a description of the applicant's experience in providing telecommunications services, or in the case of newly created companies, the applicant may provide other documentation which supports its technical ability.

8. A description of the services proposed to be offered, the proposed exact geographic areas in which the services shall be offered and a map thereof.

9. Repair and maintenance information, including the name, address and telephone number of a Louisiana contact person responsible for and knowledgeable about the applicant's operations.

10. A list of other states where the applicant has applied to operate as a

telecommunications services provider and/or to offer telecommunications services, a list of other states where the applicant is authorized to operate, and a list of those states which have denied any requested authority.

11. Illustrative tariffs in compliance with the requirements set forth in Section 401 below.

12. Such other information as the Commission Staff may specifically request of any applicant.

F. The Commission, through its Secretary, may require as a precondition to certification the procurement of a performance bond, line of credit and/or certificate of deposit sufficient to cover any advances or deposits the applicant may collect from its customers, or require that such advances or deposits be held in escrow or trust. A bond, credit and/or certificate schedule will be established based on an applicant's financial resources.

G. A showing of public convenience and necessity shall not be required of an applicant hereunder. A showing that an ILEC's services or facilities are somehow inadequate in any local service area as a condition precedent for grant of authority to an applicant hereunder shall not be required nor considered by the Commission.

H. Applications determined by the Commission Staff to be in compliance with each of the above requirements may be approved by the Commission through its Secretary and a Certificate of Authority issued therewith, unless the Secretary elects to publish notice of any application in accordance with Rule 19 of the Commission's Rules of Practices and Procedures, in which case a Certificate of Authority may be issued pending the resolution of any protest filed pursuant to subsection I below. Notice of approved applications will be published in the Commission's Official Bulletin.

I. Any notice of protest timely filed in accordance with Rules 19 and 20 of the Commission's Rules of Practices and Procedures shall be docketed and administered pursuant to Rules 54 through 66 of the Commission's Rules. Any applicant issued a Certificate of Authority hereunder shall be allowed to provide telecommunications services pending final resolution of any notice of protest filed pursuant to Rule 20 of the Commission's Rules.

J. TSPs obtaining a Certificate of Authority under this Section shall obtain certification subject to the following conditions and obligations:

1. TSPs shall comply with all Commission rules, regulations, orders, tariff and other requirements relevant to the provision of telecommunications service.

2. TSPs are prohibited from engaging in unreasonable price discrimination,

predatory pricing, price squeezing, or tying arrangements with respect to other TSPs and end users regardless of whether services are offered pursuant to tariff and/or contract.

3. TSPs are prohibited from providing preferences related to the provisioning of telecommunications services to affiliated entities.

4. TSPs shall file with the Secretary of the Commission all reports required pursuant to Section 302 below.

5. TSPs shall maintain on file with the Commission all current tariffs and service standards.

6. TSPs shall cooperate with Commission investigations of customer complaints.

7. As required by the Commission, TSPs shall participate in and contribute to a Universal Service Fund.

8. TSPs shall comply with the mandates of Commission Order No. U-17656-B, dated October 20, 1992 regarding the Americans with Disabilities Act.

9. Following certification, TSPs are required to file tariff amendments pursuant to Section 401 regarding new service offerings and changes to the geographic areas where services are to be offered prior to provisioning a new service or implementing a change in service area(s).

10. After notice and hearing, such other obligations the Commission may require.

Failure of a TSP to comply with any of the above conditions and obligations may, after notice and hearing, result in the rescission of its Certificate of Authority and/or the imposition of monetary fines not exceeding ten thousand dollars (\$10,000) per violation.

K. In addition to the conditions and obligations applicable to all TSPs set forth above in subsection J, TSPs designated by the Commission as CLECs shall be subject to the following additional conditions and obligations:

1. Upon request a CLEC shall provide to any customer in its certificated area basic local service, and shall render adequate service within its certificated area. This does not relieve an ILEC from its obligations to subscribers arising from its status as the Essential Telecommunications Carrier.

2. Within ninety (90) days of receipt of a bona fide request, a facilities-based CLEC shall provide interconnection as close as technically possible to the end user or at other locations more efficient, technically or economically feasible to the party requesting interconnection. A cable television system providing telecommunications services as a CLEC shall make interconnection available at its headend or at other locations more efficient, technically or economically feasible to the party requesting interconnection.

3. A facilities-based CLEC shall make all telecommunications service offerings on its facilities available for resale within the same class of service without unreasonable discrimination.

4. A CLEC shall charge non-discriminatory switched access rates which do not exceed the intrastate switched access rates of the competing ILEC in each of the CLEC's certificated areas.

5. All CLECs shall charge non-discriminatory interconnection rates.

6. All CLECs shall provide all customers equal access presubscription to their long distance carrier of choice as provided by Commission Orders.

7. Upon request a CLEC shall provide, either on its own facilities or through resale, service in accordance with its tariffs to all customers in the same service classification in its certificated areas.

Failure of a CLEC to comply with any of the above conditions and obligations may, after notice and hearing, result in the rescission of its Certificate of Authority and/or the imposition of monetary fines not exceeding ten thousand dollars (\$10,000) per violation.

L. After notice and hearing, the Commission may impose monetary fines not exceeding ten thousand dollars (\$10,000) per violation, or revoke a certificate previously issued to any applicant which:

1. Does not provide or fails to disclose information required by subsections E and F of this Section.

2. Submits false or materially misleading information in its application.

3. Is found not to possess adequate financial, managerial and/or technical abilities to provide services.

4. Fails to provide a performance bond, line of credit and/or certificate of

deposit, or establish an escrow or trust account, if required as a precondition to certification or, after notice and hearing, subsequent to the granting of certification.

5. Is found to have failed to comply with LRV and all applicable Commission rules, regulations, orders, tariffs, and procedures, including these Regulations such as the conditions and obligations imposed in subsections J and K above.

## **SECTION 302. Reporting Requirements of Telecommunications Services Providers**

A. All TSPs providing telecommunications services in Louisiana shall file with the Commission the following reports on a Louisiana-specific basis by April 1st of each year in accordance with Commission General Order dated August 31, 1992.<sup>3</sup>

1. All annual financial reports, including income statement and balance sheets.
2. Annual report on the availability of service capabilities and service offerings within Louisiana subdivided by facilities-based and non-facilities-based.
3. Annual report on the number of customers, access lines served, and revenues, subdivided by residential and business.

B. One year from the date of obtaining its Certificate of Authority, and semi-annually thereafter, all CLECs shall file with the Commission, service standard reports as follows:

1. Complaints - the number of complaints filed with the Commission and the CLEC.
2. The change in the total numbers of customers in each service category served in Louisiana.
3. % Appointments Offered in Five (5) Days - the percentage of appointed service initiation orders for basic local service implemented within five (5) days of such request.
4. Service Initiation Appointments Met - the percentage of appointed service initiation orders that are implemented by the appointment date set with the customer.
5. Customer Trouble Reports - the number of customer reported troubles.

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<sup>3</sup> Treatment of information designated as trade secret, proprietary or confidential.